MOY KOK MIN

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CRIMINAL APPLICATION NO. 44-16-89]
24 JULY 1989

CONSTITUTIONAL LAW: *Application for writ of habeas corpus - Detention order under the Emergency (Public Order and Prevention Crime) Ordinance 1969 - Further detention under Dangerous Drugs (Special Preventive Measures) Act 1985 - Failure by advisory board to consider applicants representations - Breach of s. 6(1) of the Ordinance - Whether further detention be made under s. 6(5) of the Act - Whether there was a breach of art. 151(1)(b) of the Federal Constitution.*

This is an application for an order that a writ of *habeas corpus* be issued for the release of the applicant. The applicant was first detained for a period of 2 years under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and was released on 16 May 1989. On the same day, the applicant was arrested for the purpose of investigations under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 and another detention order issued caused the detention of the applicant for a period of 2 years from 14 July 1987. It was submitted that there was a breach of s. 6(1) of the Ordinance in that the Advisory Council had failed to consider the applicant's representations within the three months period prescribed by s. 6(1) of the Ordinance and that the provision conflicts with s. 5(2A). Secondly that the further detention should have been made under s. 6(5) of the Act to which s. 3A of the Act applies, i.e. that there should be a complete fresh investigation in the matter which had not been conducted. It was also submitted that there was a breach of art. 151(b) of the Federal Constitution.

Held:

[1] The contention that the advisory board had failed to consider the applicant's representation must fail since the provision of s. 5(2A) overrides s. 6(1) of the Ordinance.

[2] The affidavit of the Deputy Director of the Anti-Narcortics Division shows that investigations had been carried out and the affidavit of the Deputy Minister states that from the reports of the police, he was satisfied that the applicant had associated himself in activities relating to the trafficking of dangerous drugs. This subjective satisfaction of the Minister is not subject to judicial review.

[3] There is no breach of art. 151(b) of the Federal Constitution since the advisory board can only consider representations if representations have been made. The applicant had informed the advisory board that he did not wish to make representations. The applicant cannot complain.

[Application dismissed.]

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), A, 6(1), (5), 9
Emergency (Public Order & Prevention of Crime) Ordinance 1969, ss. 3, 4, (1), A, 5(2A), 6(1)
Federal Constitution, art. 151(1)(b)

For the applicant - V. Shanmugam (Shanmugam & Co.)
For the respondents - Abu Samah bin Nordin (Senior Federal Counsel)

JUDGMENT

Wan Adnan J:

This is an application for an order that a writ of *habeas corpus* be issued for the release of the applicant.

The applicant was first detained for a period of two years from 17 May 1985 under s. 4(1) of the Emergency (Public Order & Prevention of Crime) Ordinance 1969 (the Ordinance) pursuant to the detention order dated 15 May 1985.

The detention order is as follows:

Ordinan Darurat (Ketenteraman Awam Dan Mencegah Jenayah), 1989 Perintah Tahanan
[Seksyen 4(1)]

Kepada:

Penguasa Kanan
Pusat Pemulihan Akhlak
Muar, Johor

Ketua Polis Negara
Bukit Aman - Kuala Lumpur.

Semua Pegawai Polis Diraja Malaysia yang Berkenaan.

Bahawasanya saya, Menteri Hal Ehwal Dalam Negeri berpushati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan ketenteraman awam atau untuk menghapuskan kekerasan atau mencegah jenayah yang melibatkan kekerasan.

Nama	No. Kad Pengenalan
Moy Kok Min	5468128

Oleh yang demikian, pada menjalankan kuasa yang diberikan kepada saya di bawah Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah), 1969, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebhut di atas ditahan selama dua tahun mulai dari 17 haribulan Mei 1985 di Pusat Pemulihan Akhlak, Muar, Johor atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 15 haribulan Mei 1985.

t.t.

(Radzi Tan Sri Sheikh Ahmad) Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia

[Bil. KHEDN. O. POPOC 9993]

The statement of the grounds on which the order was made and the allegations of fact on which the order was based is in the following form:

Ordinan Darurat (Ketenteraman Awam Dan Mencegah Jenayah) 5/69

Nama Orang Moy Kok Min

Tahanan: No. K/P :5468128

Alasan-alasan Yang Atasnya Perintah Itu Dibuat:

Kamu adalah seorang pembekal dan pengedar dadah jenis heroin dan morfin yang merbahaya. Kegiatan-kegiatan kamu telah menyebabkan bertambahnya kejadian-kejadian jenayah yang berunsur kekerasan berkaitan dengan dadah dan bertambahnya penagihan dadah. Oleh yang demikian kamu telah bertindak secara memudaratkan ketenteraman awam.

Tuduhan-tuduhan Yang Perintah Itu Berasaskan

Bahawa kamu adalah seorang ahli sindiket pembekalan/pengedaran dadah morfin/heroin yang bergiat cergas di Pulau Pinang sejak tahun 1978. Sindiket kamu telah mendapat bekalan dadah morfin/heorin daripada pemberkal-pemberkal di Haadyai, Thailand untuk dijualkan kepada pembeli-pembeli di Pulau Pinang.Sejak melibatkan diri di dalam kegiatan pembekalan/pengedaran dadah morfin/heroin, sindiket kamu telah berjaya mengedar sejumlah 798 paun morfin 825 paun heroin No.3 dan 516 paun heroin base dengan mendapat keuntungan berjumlah lebih kurang $3,245,500.

Dengan Arahan Menteri Dalam Negeri

t.t.
(Abdul Rahim Bin Hashim)
Penolong Setiausaha, Kementerian Dalam Negeri.
Tarikh: 14 hb Mei, 1985 (Ruj: KDN.S.POPOC.9993)

The applicant was detained at Pusat Pemulihan Akhlak Muar. According to Hassan bin Yacob, the Penguasa Kanan Penjara of the said centre in his affidavit affirmed on 24 May 1989 the applicant was released on 16 May 1989. On the same day at 10.20 a.m. in front of the said centre the applicant was arrested by Inspector Sopandi bin Sarbini for the purpose of investigations under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act). By the detention order dated 13 July 1987 the applicant was detained for a period of two years from 14 July 1987 under s. 6(1) of the Act.

The detention order is as follows:

Akta Dadah Merbahaya (Langkah-langkah Pencegahan Khas), 1985, (Atka 316) Perintah Tahanan (Seksyen 6(1))

Kepada:
Penguasa Pusat Pemulihan Akhlak Muar, Johor.

Ketua Polis Negara,
Bukit Aman,
50560 Kuala Lumpur

Semua Pegawai Polis Di Raja Malaysia yang berkenaan.

Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke attas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.

Nama Moy Kok Min Nombor Kad Pengenalan 5468128

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya dibawah s. 6(1) Akta Dadah Berbahaya (Langkhlangkah Pencegahan Khas), 1985, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan Julai 1987 di Pusat Pemulihan Akhlak, Muar, Johor atau di mana-mana tempat lain sebagimana yang diarahkan oleh saya dari semasa ke semasa.

Ditandatangani pada 13 haribulan Julai 1987.

(t.t.)
(Dato' Megat Junid Bin Megat Ayob)
Timbalan Menteri Dalam Negeri Malaysia
(Rujukan: KDN.S.205/1182/1-9993)

The statement of the grounds on which the order was made and the allegations of fact on which the order was based is in the following form:

Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985

Nama Orang
Tahanan: Moy Kok Min
No. K/P : 5468128

Alasan-alasan Yang Atasnya Perintah Itu Dibuat:

Kamu adalah seorang pembekal dan pengedar dadah jenis heroin dan morfin yang merbahaya. Kegiatan-kegiatan kamu telah menyebabkan bertambahnya kejadian-kejadian jenayah yang berunsur kekerasan berkaitan dengan dadah dan bertambahnya penagihan dadah. Oleh yang demikian kamu telah bertindak secara memudaratkan ketenteraman awam.

Tuduhan-tuduhan Yang Perintah Itu Berasaskan

Bahawa kamu adalah seorang ahli sindiket pembekalan/pengedaran dadah morfin/heroin yang bergiat cergas di Pulau Pinang sejak tahun 1978. Sindiket kamu telah mendapat bekalan dadah morfin/heroin daripada pemebekal-pemebekal di Haadyai, Thailand untuk dijualkan kepada pembeli-pembeli di Pulau Pinang. Sejak melibatkan diri di dalam kegiatan pembekalan/pengedaran dadah morfin/heroin, sindiket kamu telah berjaya mengedar sejumlah 789 paun morfin 825 paun heroin No.3 dan 516 paun heroin base dengan mendapat keuntungan berjumlah lebih kurang $3,245,500

Dengan Arahan Menteri Dalam Negeri

t.t.
(Abdul Aziz Bin Muhamad)
Penolong Setiausaha,
Kementerian Dalan Negeri.
Tarikh: 13hb Julai 1987
(Ruj: KDN.S.205/1182/1-9993)

At the hearing only three grounds were proceeded with:

1. There was a breach of s. 6(1) of the Ordinance.
2. There was a breach of s. 3A and 6(5) of the Act.
3. There was a breach of art. 15(b) of the Federal Constitution.

Ground No. 1

It was submitted that the advisory board had failed to consider the applicant's representations within the three months period prescribed by s. 6(1) of the Ordinance. The provisions of this sub-section are in conflict with the provisions of s. 5(2A). In criminal application no. 44-4-89 in the High Court of Malaya at Penang, Edgar Joseph Jr. J held that s. 5(2A) overrides s. 6(1). This decision has been upheld by the Supreme Court.

The ground must therefore fail.

Ground No. 2

It was submitted that the further detention should have been made under s. 6(5) of the Act. Therefore s. 3A of the Act applies. The applicant had not been released.

For ease of reference the provisions of s. 6(5) and 3A are produced hereunder.

Section 6(5)

A detention order under sub-section (1), or a restriction order under sub-section (3), may be made against a person notwithstanding that immediately, or at any time before his arrest and detention under sub-section (1) of s. 3:

(a) he had been detained under a detention order made under s. 4, or had been subject to a restriction order made under s. 4A, of the Ordinance on grounds which are wholly or partly the same as or similar to the grounds on which the detention order under sub-section (1) or the restriction order under sub-section (3) is to be made against him; and

(b) he had been released from detention either upon the expiry of the duration of the said detention order under s. 4 of the Ordinance against him, or otherwise howsoever before such expiry, or had ceased to be subject to the said restriction order made under s. 4A of the Ordinance against him either upon the expiry of the duration of the said restriction order, or otherwise howsoever before such expiry.

3A. Where the person arrested and detained under sub-section (1) is a person in respect of whom sub-section (5) of s. 6 applies, the complete report of the investigation referred to in sub-section (3) in respect of such person may include any statement, document, information, or other thing or material whatsoever which had been obtained in the course of any enquiries made in respect of such person by a police officer under s. 3 of the Ordinance for the purpose of detention order under s. 4, or the restriction order under s. 4A, as the case may be, of the Ordinance, against him, regardless that such statement, document, information, or other thing or material was obtained in a manner which does not accord or comply with the requirements of s. 4, and it shall not be necessary for any statement to be taken under s. 4 for the purpose of such report in respect of such person, but if any statement is taken under s. 4 it shall also be included in such report in respect of such person.

It is my view that s. 6(5) is only an enabling section. It enables a detention order under the Act to be made against a person who has been under detention under the Ordinance on the grounds which are wholly or partly the same as the grounds on which the detention order was made.

In this case the applicant was duly released on 16 May 1989 upon the expiry of the detention order under s. 4(1) of the Ordinance. The detention order under the Ordinance had come to an end.

He was arrested on 16 May 1989 by Inspector Sopandi bin Sarbini in front of Pusat Pemulihan Akhlak Muar for the purpose of investigations under s. 3(1) of the Act. Finally the detention order dated 13 July 1987 was made against him.

Counsel for the applicant submitted that there had been no fresh investigations in the matter. This was apparent from the reference files in respect of both the detention orders. I do not think this is the correct inference. The affidavit of Sulaiman bin Mohd. Hassan, the Deputy Director of Anti Narcotics Division Kuala Lumpur encl. (18) shows that investigations had been carried out. The Deputy Minister in his affidavit affirmed on 22 May 1989 had stated in para. 4 as follows:

4. From the reports and information relating to the conduct and activities of the applicant I received from the police and the report of the inquiry officer pursuant to s. 5(4) of the Act, I was satisfied that the applicant had associated himself in activities relating to or involving in the trafficking of dangerous drugs and that it was necessary in the interest of public order that the applicant be detained. Accordingly I made an order directing that he be detained for a period of two years with effect from 14 July 1987.

The subjective satisfaction of the Minister is not subject to judicial review.

The ground must fail.

Ground No. 3

Under art. 151(b) of the Federal Constitution and s. 10 of the Act the Advisory Board can only consider representations if representations have been made. In this case the applicant chose not to make any representations. The requirements of s. 9 of the Act had been duly complied with. But the applicant through his letter dated 21 July 1987 (Exhibit KA1) attached to the affidavit of Khalid bin Ahmad, the secretary to the Advisory Board, had informed the Advisory Board that he did not wish to make representations. The applicant cannot now complain. This ground must also fail.

I therefore dismiss the application.

Also found at [1989] 2 CLJ 1028